

USA v. Miselis 3:18cr25 Dentention Hrg. 12/3/2018

1 UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF VIRGINIA  
3 CHARLOTTESVILLE DIVISION

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4 UNITED STATES OF AMERICA, CRIMINAL CASE NO.: 3:18CR25  
5 December 3, 2018 11:28 a.m.  
6 Charlottesville, Virginia  
7 Detention Hearing

8 Plaintiff,  
9 vs.

10 MICHAEL PAUL MISELIS, Before:  
11 HONORABLE NORMAN K. MOON  
12 UNITED STATES DISTRICT JUDGE  
13 Defendant. WESTERN DISTRICT OF VIRGINIA

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11 APPEARANCES:

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30 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY;  
31 TRANSCRIPT PRODUCED BY COMPUTER.

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8 INDEX OF EXHIBITS

9 EXHIBITS ON BEHALF OF THE GOVERNMENT:

10 EXHIBIT:	Marked	Received
11 1	3	3

13 EXHIBITS ON BEHALF OF THE DEFENDANT:

14 EXHIBIT:	Marked	Received
15 (NONE)		

16 ////

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1 (Proceedings commenced, 11:28 a.m.)

2 THE COURT: Call the case, please.

3 THE CLERK: This is the case of the *United States of*  
4 *America versus Michael Paul Miselis*, Case Number 3:18-CR-25,  
5 defendant number 2.

6 THE COURT: All right. Government ready?

7 MR. CULLEN: We are, Your Honor.

8 THE COURT: Defendant ready?

9 MR. COX: Yes, Your Honor.

10 THE COURT: All right. This is a de novo hearing,  
11 so the government is asking for retention, I gather.

12 MR. CULLEN: Thank you, Your Honor. Good morning.  
13 May it please the Court. Thomas Cullen for the United  
14 States.

15 For purposes of this bond appeal, and with the  
16 Court's permission, I intend to proceed by proffer and  
17 argument.

18 THE COURT: All right.

19 MR. CULLEN: In so doing, I've got some exhibits for  
20 the Court. I have copies for Mr. Cox as well.

21 (Government's Exhibit 1 received)

22 MR. CULLEN: As the Court is aware, we're seeking  
23 reversal of the California magistrate judge's decision, after  
24 she initially determined that Mr. Miselis was a danger to the  
25 community, that he should be released on a secured bond.

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1           Respectfully, Your Honor, we believe that decision,  
2       which in fairness to the magistrate judge, was based on very  
3       limited information about the case, the defendant's personal  
4       involvement with a militant white supremacist group, the  
5       strength of the evidence, and extensive international ties  
6       and travel on behalf of the defendant, we believe that her  
7       decision -- that releasing him on secured bond would satisfy  
8       concerns about his dangerousness and risk of flight -- was  
9       misguided.

10           In our view, Your Honor, there are simply no  
11       conditions or combination of conditions that would reasonably  
12       assure the safety of the community and the defendant's  
13       reappearance in future court proceedings.

14           I think as a threshold matter, from a legal  
15       standpoint, Judge, it's important to note that we're seeking  
16       a detention hearing under two prongs of the Bail Reform Act.

17           First, Section 3142(f)(1)(A). In our view, based on  
18       strict application of the statute, the riot statute, we  
19       believe it qualifies as a crime of violence under the Bail  
20       Reform Act's definition of such in that it requires as an  
21       element acts of violence, attempted violence, and threat of  
22       violence, and because it involves a substantial risk that  
23       physical force will be used in the commission of the offense.

24           But we're also seeking a detention hearing under  
25       3142(f)(2) because there is a serious risk that this

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1 defendant will flee prosecution if he's released.

2 And I would note to the Court that the magistrate  
3 judge in California didn't consider that factor. And again  
4 in fairness to her, she had limited information about this  
5 defendant's extensive travel overseas to meet with white  
6 supremacist groups and other things.

7 Either way, no matter which prong we proceed under,  
8 Judge, the Court needs to consider, or should consider,  
9 respectfully, both his potential dangerousness and risk of  
10 flight. 3142 makes that clear.

11 So let's look at the 3142 factors, the detention  
12 factors, that the Court should consider today.

13 First, the nature and circumstances of this offense.  
14 The defendant is alleged to have committed particularly  
15 violent acts in Charlottesville and elsewhere. The Court has  
16 in front of it several photographs that are still frames from  
17 videos. And what those photographs depict -- and I'll go  
18 through each one in just a minute, but in summary, they  
19 depict the defendant punching, kicking, stomping, and pushing  
20 numerous people along 2nd Street Northeast as part of the  
21 August 12, 2017 Unite the Right Rally.

22 If the Court will take note, Exhibit Number 2, the  
23 second photograph, depicts a man who has fallen to the  
24 ground, he's bent over, and on the left side of that  
25 photograph you see someone's leg. He's got Adidas athletic

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1 pants with three stripes. He's got his hands taped. And  
2 he's holding in his left hand -- or his right hand the Rise  
3 Above Movement banner that's depicted in other photographs.

4 Your Honor, if you flip back to the first page, the  
5 first exhibit, you'll see the defendant holding that same  
6 banner in his hand.

7 Turn to the second page and you'll see that it's the  
8 same hand, same banner.

9 And the other exhibits clearly depict the defendant  
10 is wearing those Adidas pants.

11 So we believe -- and I'll explain in just a  
12 minute -- that the defendant kicked that young man so hard in  
13 that second photograph that the defendant broke his toe when  
14 he did it. He was complaining he thought he had broken his  
15 foot because he'd used so much force kicking this man as he  
16 fell to the ground on 2nd Street.

17 But, Your Honor, the defendant, with respect to the  
18 nature and circumstances of the offense, committed similar  
19 acts of violence in other political rallies in California  
20 months before he came to Charlottesville.

21 The second thing the Court should consider with  
22 respect to the bond determination is the strength of the  
23 evidence.

24 Your Honor, the evidence in this case against the  
25 defendant is overwhelming. There are numerous videos and

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1 photographs, taken by a variety of witnesses, bystanders on  
2 2nd Street, and multiple news organizations, depicting the  
3 defendant committing these violent and riotous acts in  
4 Charlottesville.

5 Your Honor, the defendant himself was wearing a body  
6 camera during the Unite the Right Rally. Both on August  
7 11th, when he participated in the tiki torch rally on the  
8 grounds of the University of Virginia, and the following day,  
9 when he committed those violent acts, he was wearing what's  
10 called a GoPro camera so he could memorialize himself  
11 committing various violent acts. And that's evidence the  
12 government has and is going to introduce in his trial.

13 In addition, Your Honor, we have numerous eye  
14 witnesses, victims, and rally participants who will testify  
15 that the defendant himself committed these violent acts. So  
16 you have the video, the photographs, and you have percipient  
17 eye witnesses who were standing on that street who were  
18 either struck by this defendant or witnessed him do that, and  
19 will testify about that.

20 Your Honor, after the Unite the Right Rally, when  
21 this defendant went home to California, he authored numerous  
22 text messages bragging about committing acts of violence in  
23 Charlottesville. And I'm going to read you one of the text  
24 messages that the defendant wrote when Exhibit Number 2  
25 appeared on various social media sites and these participants

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1 found out that these pictures were now on the internet. Let  
2 me quote to you.

3 So the context for this text message is one of the  
4 defendant's co-conspirators sent him this photograph, Number  
5 2, and he asked him: "Is that you in the picture kicking  
6 this guy?"

7 And this is what the defendant said in response.  
8 Quote, "Yeah, I think so. Didn't even see my foot on the  
9 left side of that picture at first, and laughed out loud at  
10 you choking a" -- B-I-T-C-H; he uses the word -- "in the  
11 second one. Where did you find these? Hopefully, no one  
12 else comes across them."

13 Well, we've come across them, Judge. We have all of  
14 defendant's text messages where he brags about committing  
15 various acts of violence in Charlottesville.

16 Moreover, Your Honor, the defendant himself admitted  
17 on at least two occasions to customs and border patrol  
18 officers, when he reentered the United States after traveling  
19 internationally to Europe, that he had attended the  
20 Charlottesville rally and that he had also attended political  
21 rallies where riots ensued in Huntington Beach and Berkeley,  
22 California.

23 Your Honor, we have travel records. We have the  
24 defendant's phone records. We have his bank records. We  
25 have miscellaneous receipts showing and corroborating that



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1 the defendant himself was in Charlottesville, and it  
2 corroborates the already overwhelming evidence as set forth  
3 in the videos, the photographs, and the eye witness  
4 testimony.

5 Let me briefly raise this point. There is no valid  
6 self-defense claim in this case. The defendant deployed to  
7 multiple political rallies in order to engage in riotous  
8 conduct and commit acts of violence.

9 Simply put, Your Honor, you can't avail yourself of  
10 self-defense when you travel to engage in a street fight.  
11 And that's what this defendant did, and he did it on more  
12 than one occasion.

13 History and characteristics of this defendant. The  
14 government will concede that the defendant is highly  
15 educated. He's a smart guy. He did well in high school. He  
16 attended, I believe, the University of California, Los  
17 Angeles, UCLA. I believe he was in the sixth or seventh year  
18 of a Ph.D. program in aerospace engineering. He held a top  
19 secret security clearance. He had everything going for him.

20 But it's equally true that this defendant was a  
21 member of a militant white supremacist group that committed  
22 acts of violence in support of its antisemitic and racist  
23 ideology. They did it in Charlottesville, and they did it in  
24 multiple rallies in California. And the defendant was all-in  
25 with respect to membership in this group.

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1 I'd like to read for the Court the FBI 302. When  
2 this defendant was arrested on October 2nd in California, the  
3 FBI prepared an inventory, the items that they found in his  
4 residence. And I'll just cite several of these items for the  
5 Court: journal with possible IED instructions; hobby fuse  
6 cord and matches; black skull mask; flares; wire pull smoke  
7 device; bandannas; a book entitled *How to Bomb the U.S.*  
8 *Government*; white power foreign language stickers; docs  
9 containing foreign travel contacts and declarations; an  
10 e-ticket for Warsaw, Poland; white supremacist propaganda,  
11 travel documents and receipts; two cases of AR-15 ammunition;  
12 and three ammo cans.

13 And it's my understanding there were thousands of  
14 rounds of AR15-type ammunition in the defendant's residence.

15 Aerosol, possible mace; a metal 88 sign. And the  
16 Court probably doesn't know this, but 88 is the number for  
17 Adolf Hitler. He had that banner sign in his residence. And  
18 a black billy club.

19 So these were some of the items that this defendant  
20 had on his person, in his residence, over a year after he  
21 came to Charlottesville to participate in the Unite the Right  
22 Rally.

23 Your Honor, the defendant over the last nine months  
24 has made at least two trips to the Ukraine, where we suspect  
25 he met with representatives of a group called the Azov

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1 Battalion, which is a right wing white supremacist  
2 paramilitary organization that we believe may have ties to  
3 the Russian government.

4 This defendant also has a Ukrainian girlfriend that  
5 he is still in touch with. I think that right there  
6 demonstrates that he has substantial ties internationally to  
7 some very problematic groups, and he has a significant tie to  
8 a young lady that he feels very strongly about who is located  
9 overseas.

10 Last spring, in addition, Judge, he traveled to  
11 Germany with several RAM members to attend the Sword and  
12 Shield Festival, which has been described as the biggest  
13 white nationalist rally of the year. It's a festival where  
14 white nationalists and white supremacists in Europe and the  
15 United States gather to celebrate Adolf Hitler's birthday.

16 From there he went to Italy, where he met with  
17 members of a neofascist political party.

18 Your Honor, this defendant has already attempted to  
19 obstruct justice. During one border inspection meeting when  
20 he came back to the United States in Los Angeles, when he  
21 flew in, he was stopped by border patrol officers, and during  
22 that interview he did a factory reset on his phone in order  
23 to wipe the data that was on his phone. He knew they were  
24 interested in his involvement in riots in California and  
25 Charlottesville. Because they were asking those questions

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1 during the course of that interview, he attempted to wipe the  
2 data off his phone.

3 I would also note for the Court that one of  
4 Mr. Miselis's codefendants or coconspirators in a second but  
5 related case in California, one of the leaders of the Rise  
6 Above Movement, named Robert Rundo, after the defendant and  
7 the three other defendants were charged in Charlottesville,  
8 were arrested, Mr. Rundo attempted on two occasions to travel  
9 internationally to flee prosecution. Because he knew that  
10 the authorities in California were very likely to try to  
11 charge him, Mr. Rundo fled to El Salvador, and the FBI was  
12 able, thankfully, to arrest him there, and he's been  
13 extradited to the United States. So this organization, in  
14 addition to having substantial ties overseas, one of its  
15 members and leaders has already attempted to flee to a  
16 foreign country.

17 Couple more points, Judge. First, since the  
18 defendant has been arrested, associates of and sympathizers  
19 of this particular group, the Rise Above Movement, have made  
20 threats against government agents and officers and one news  
21 organization as a result of their arrests in this case.  
22 That's something that's being investigated by the FBI and  
23 other law enforcement agencies, but it shows you the ties  
24 that this particular group has in social media and the  
25 lengths that they will go to in order to further their cause.

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1           In short, Your Honor, given all of this -- the  
2 strength of the evidence, the international travel, the  
3 brutal acts that this defendant himself committed -- there  
4 simply are no conditions or combination of conditions that  
5 would reasonably assure the safety of the community and  
6 ensure that this defendant appears when he needs to be. We  
7 would ask the Court, therefore, to order him detained until  
8 he is tried in this courthouse early next year.

9           Thank you.

10          THE COURT: All right.

11          Yes, sir?

12          MR. COX: May it please the Court. I'm Gene Cox,  
13 attorney for the defendant, Michael Miselis.

14          Your Honor, as an initial matter, we will concede  
15 that the government has authority to seek detention in this  
16 case. So I'm not going to argue that this, as alleged, is  
17 not a crime of violence; so I'll concede that.

18          But where I think the government has an argument  
19 that doesn't meet the clear and convincing standard is, if we  
20 look at the four factors -- and, you know, counsel went  
21 through each of the factors, but I think he conflated a  
22 couple of the -- you know, a couple of the factors. And I'll  
23 explain that to you.

24          First of all, talking about the nature of the  
25 offenses, there's been no evidence presented by counsel, or

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1 that we're aware of, that my client was a leader of this  
2 organization. There's -- counsel did not present any  
3 evidence that he was in charge of the organization, as  
4 Mr. Rundo clearly was. My client was just a follower. He  
5 went along. So anything that he's alleged to have committed  
6 would have been in the company of others in the organization  
7 itself. There's no allegation that he as an individual  
8 traveled on his own and committed any violence on his own.

9 Also, you know, there are -- you know, looking at  
10 the exhibits, there's a couple of allegations that he engaged  
11 in violence, but overall he is a minor actor in the events  
12 charged in this case. Again, he was a follower.

13 Now, where I think that my client especially has  
14 compelling evidence is when we talk about the history and  
15 characteristics. As counsel noted, you know, my client was  
16 an excellent student in school. He grew up in Stockton,  
17 California. He lived in the house that he was born in until  
18 he went to college at UCLA. He's an outstanding student.  
19 He's finishing his doctoral program in aerospace engineering  
20 at UCLA.

21 As the client noted, he also had a top secret  
22 clearance. They just don't hand those out like candy. He  
23 had to undergo an intensive investigation, looking into  
24 everything possible: his possible drug use, any allegations  
25 of any criminal activity. They came up with nothing. They

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1 awarded him this top secret clearance. So prior to the  
2 circumstances that are alleged in this case, my client had  
3 led a voluminous life.

4 Also he has extensive familial ties. As I  
5 mentioned, his parents live in Stockton, California. His  
6 father is an optometrist. He lived with his parents until he  
7 went off to college. He also has brothers and sisters that  
8 he maintains close ties with.

9 As far as employment, as I mentioned, until the  
10 circumstances in this case led to his termination of  
11 employment, he was working with Northrop Grummon and had an  
12 outstanding career before him.

13 There's been no allegations of any drug use at all,  
14 or alcohol use, nothing like that.

15 Also, during the search, counsel talked about the  
16 ammo and I think baseball helmets and bats and other things  
17 that were found in his apartment, but there was nothing in  
18 his apartment that was of an illegal nature. I'm sure  
19 counsel would have pointed that out if there had been. So  
20 all of those things that they found in his apartment were all  
21 legal.

22 And I want to talk a little bit about, you know, his  
23 foreign travel. You know, he did go to Germany and Italy.  
24 However, in both of those countries, he was not arrested. He  
25 engaged -- you know, besides being a tourist, he may have met

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1 with other individuals there, but he didn't do anything  
2 illegal. Especially Germany is very, very strict with any  
3 kind of activity, especially right wing groups that could --  
4 you know, groups that could be engaged in any kind of  
5 violence. And he was not arrested by the Germans. I'm sure  
6 they knew he was there, and they didn't see anything wrong  
7 with that.

8 He does have a girlfriend but, again, the girlfriend  
9 is not alleged to have any involvement with any sort of white  
10 supremacist group; so that really should not be something  
11 that should be held against him.

12 And as far as, you know, showing up for court,  
13 there's never been any allegation that he has, you know,  
14 attempted to flee or that he's not shown up for any  
15 appointments or anything like that. Indeed, his parents were  
16 willing to put up a \$350,000 bond on his behalf. And as I  
17 mentioned, he has very close ties with his parents, and you  
18 would have to believe that he'd be willing to have his  
19 parents lose their house; and I think his background and  
20 character and record shows that that's something he would not  
21 do.

22 So, Your Honor, I think that -- you know, if you  
23 look at the factors, one thing I was going to mention is the  
24 fact that counsel, when he was talking about history and  
25 characteristics of the person, he really didn't have any



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1 argument there, so he pointed you back to the allegations  
2 committed in the offense by saying that, because he was  
3 charged with those allegations, he has a deficient character.  
4 So, in fact, he's conflating those two factors that you're  
5 supposed to examine, and I would ask you to look at each of  
6 those factors in and of themselves. So please don't conflate  
7 the fact that he's charged with an offense with his character  
8 that he's shown throughout his life.

9 So we think that once you look at all of those  
10 factors, you will conclude both that he's not a danger to  
11 flee and he's not a danger to himself or others, and we ask  
12 that you deny counsel's request to overturn the magistrate's  
13 order.

14 THE COURT: All right.

15 MR. CULLEN: Your Honor, two final very quick  
16 points, first with respect to his top secret security.

17 THE COURT: Will there be any evidence other than --

18 MR. CULLEN: Nothing other than our proffer and the  
19 exhibits that we tendered to the Court. And with respect to  
20 those exhibits, Judge, Exhibit 3 is a grainy image, a still  
21 frame, from one of these videos. And I'll just orient the  
22 Court and point out, the Defendant Miselis can be seen kind  
23 of in the left center of that photograph. He's got a black  
24 backpack, a red hat, and you see an arm extending down and a  
25 fist clenched that's clad in white tape, and he's punching

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1 someone who is lying on the ground. I think I would be  
2 remiss if I didn't point that out to the Court, somebody who  
3 is defenseless, posing absolutely no risk or danger to him.

4 The second thing I would point out in response, Your  
5 Honor, is, with respect to his top secret security clearance  
6 with the defense contractor, as counsel noted, that security  
7 clearance was revoked; and I think it's fair to say that when  
8 it was issued, the United States government had no idea that  
9 this defendant was a member of a militant white supremacist  
10 group.

11 MR. COX: Your Honor, just briefly. Again, I think  
12 counsel is conflating the first factor, nature of offense,  
13 with the history and characteristics of the person; because  
14 he's been charged with this offense, he has no character.  
15 And there's a reason that that's a separate factor.

16 Also, counsel said that some factors came out after  
17 the magistrate made her decision. I'm aware of this de novo  
18 hearing, but I believe that the magistrate, who actually  
19 changed her mind -- she first denied bail, then she granted  
20 it after looking further into the case. Most of the things  
21 that counsel brought up were extensively detailed in the  
22 affidavit in support of the criminal complaint, which the  
23 magistrate had access to. So we think she made the correct  
24 decision, and we ask Your Honor to make the same decision.

25 THE COURT: But what was the travel, where you say

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1 he went to engage in violence? What is -- summarize what  
2 that is.

3 MR. CULLEN: Sure.

4 THE COURT: I mean, there are no violent acts in  
5 Europe?

6 MR. CULLEN: Not that we're aware of. He was  
7 meeting with members of militant white supremacist groups,  
8 attending political rallies, taking photographs. One of his  
9 co-conspirators engaged in a mixed martial arts competition.  
10 But we're not alleging and there's no allegation that there  
11 were violent acts in Europe.

12 With respect to travel, this defendant traveled from  
13 Southern California in a bus or a minivan that they rented  
14 with several of his Rise Above Movement cohorts, to Berkeley,  
15 California, in April of 2017, and engaged in riotous and  
16 violent acts against people, similar to what they did in  
17 Charlottesville.

18 With respect to travel in Charlottesville, this  
19 defendant flew from Southern California across the country on  
20 August 11, 2017, and engaged in riotous conduct on August 11,  
21 on the grounds of UVa; and then, as we spent a lot of time  
22 talking about this morning, on August 12, the following day,  
23 on 2nd Street, and then later during the rally that morning  
24 and early afternoon.

25 Once that was completed, he traveled back from

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1 Virginia to Southern California. And I think it's important  
2 to point out to the Court, when I'm talking about his history  
3 and characteristics and I'm citing all of the items that were  
4 seized, *How to Bomb the U.S. Government*, riot gear, thousands  
5 of rounds of ammunition, that was 14 months after this  
6 defendant is alleged to have come to Charlottesville. This  
7 isn't something he left behind. This wasn't a one-off. That  
8 evidences his deep affiliation with this particular violent  
9 extremist group. And I would also argue that it indicates an  
10 escalation in his conduct, his demeanor, his thoughts, and  
11 his commitment.

12 THE COURT: How large is the group?

13 MR. CULLEN: I'm sorry?

14 THE COURT: How large is the group?

15 MR. CULLEN: The group itself, Your Honor, was  
16 probably upwards of ten to 15 members. Currently eight of  
17 them are charged federally; four in this court and four in  
18 California. And it's my understanding that the investigation  
19 is ongoing.

20 THE COURT: Okay.

21 MR. COX: Your Honor, again briefly. You know,  
22 there's no allegation that -- they don't have any evidence  
23 that they've presented that shows that he specifically  
24 traveled to Charlottesville to commit violence. He did  
25 travel to Charlottesville, as did hundreds of other people,

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1 to -- you know, to engage in free speech. I mean, there was  
2 violence that occurred, but they haven't shown you anything  
3 where he actually planned to commit violence in  
4 Charlottesville.

5 Also, as to those things that were found in his  
6 apartment, counsel is attempting to have it both ways. He  
7 said that he tried to reset his phone when he was being  
8 interviewed by customs upon re-entry into the country, but  
9 yet he had all of this material that was still in his  
10 apartment 14 months after Charlottesville. If it was going  
11 to be used in some sort of illegal plan and he was some sort  
12 of mastermind, I'm sure he would have disposed of that. He  
13 knew that he was under surveillance. He just did not have a  
14 guilty mind; and for that reason, he did not get rid of this  
15 stuff. It was legal to have and, you know, he just didn't  
16 have any kind of guilty intent.

17 So I think that shows that, you know, again, he was  
18 a bit player here and he was not the planner of those things  
19 that happened that he was charged with.

20 THE COURT: What about this Exhibit 1, what is this  
21 thing he has in his hand?

22 MR. CULLEN: We believe that's the banner that's  
23 depicted in Exhibit 7 that they unrolled and stood behind  
24 after the melee on 2nd Street, where they brutally assaulted  
25 a number of people. They went into the park, they unfurled

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1 the banner, the members of this group, and they posed for  
2 pictures.

3 THE COURT: He injured his hand? What is the tape  
4 on his hand for?

5 MR. CULLEN: The significance of the tape, we have  
6 learned through subsequent investigation that the  
7 codefendant, his codefendant, Mr. Gillen -- and I believe  
8 Mr. Daley's hands are taped as well -- they taped their hands  
9 on the morning of August 12 at a residence in downtown  
10 Charlottesville that they had rented for purposes of engaging  
11 in this conduct. Mr. Daley encouraged Gillen and Miselis to  
12 tape their hands so they wouldn't break their hands when they  
13 punched people in the riots that ensued. Mr. Daley, in fact,  
14 explained a number of times throughout August 12 that he had  
15 to quit punching people in the head because he was injuring  
16 his hands.

17 So the purpose of the tape, Judge, according to the  
18 defendants and co-conspirators, is to protect their hands  
19 when they punched people. They did it -- they taped those  
20 hands up before they even left the house that morning. I  
21 think that indicates what they intended with respect to what  
22 was going to occur later in the day.

23 MR. COX: Your Honor, I believe I have an alternate  
24 plausible explanation as to why he taped his hands. I don't  
25 think counsel has discussed it very much, but they actually

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1 had long sleeve shirts. They also had scarves that they  
2 wore. I think they anticipated that there was going to be  
3 teargas possible at this event, because there had been at  
4 other rallies that they went to; and the tape covered their  
5 hands and minimized their exposure to teargas.

6 And so, again, there's no evidence that -- anything  
7 from the defendant saying, I taped my hands so I could -- it  
8 would somehow help me attack people.

9 And also I note with the poster that he had in his  
10 hand, first, it was entirely legal, it was a poster, and it  
11 was not used as a weapon in any way. It was just a poster.

12 MR. CULLEN: Judge, Mr. Kavanaugh -- in answer to  
13 your question, I forgot the defendant broke his hand in  
14 Berkeley, California four months before he came to  
15 Charlottesville. He admitted to breaking his hand during  
16 that riot in text messages, and we have video of him punching  
17 people. So that's the primary reason why he and his  
18 co-conspirators taped their hands, so they didn't further  
19 injure their hands when they punched people at will on the  
20 street in Charlottesville.

21 THE COURT: All right. Well, we'll take a recess  
22 for a few minutes.

23 THE MARSHAL: All rise.

24 THE COURT: Is that all?

25 MR. CULLEN: That's all we have, Your Honor.

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1 MR. COX: That's all, Your Honor.

2 THE COURT: Thank you.

3 THE MARSHAL: All rise.

4 (Recess, 11:59 a.m. to 12:21 p.m.)

5 THE MARSHAL: Remain seated and come to order.

6 THE COURT: All right. Pursuant to U.S.C.

7 3145(a)(1), I have reviewed the decision of the magistrate  
8 judge de novo, as the Court with original jurisdiction, to  
9 make an independent determination about whether the defendant  
10 will be detained pending trial.

11 In addition to considering the evidence and the  
12 argument presented today, I've reviewed the factors set forth  
13 in U.S.C. 3142(g), including the nature and circumstances of  
14 the offense charged, the weight of the evidence against the  
15 defendant, history and characteristics of the defendant, and  
16 the nature and seriousness of the danger to any person or the  
17 community.

18 Having considered these statutory factors, the  
19 record, and the arguments raised today, I find no condition  
20 or combination of conditions of release that reasonably  
21 ensure the appearance of the defendant and the safety of any  
22 other person in the community. I make this finding because  
23 the offense charged alleges, apparently with substantial  
24 photographic, video, and other evidence, that the defendant  
25 traveled on at least four occasions for the purpose of



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1 committing violence at various rallies and did, in fact,  
2 engage in acts of violence at these rallies. Defendant's  
3 alleged actions stem from his association with a radical  
4 white supremacist organization that spreads its message and  
5 pursues this message through violence.

6 Accordingly, there's nothing wrong -- nothing  
7 criminal about having these thoughts, believing as the  
8 defendant apparently does, but the evidence is that this is  
9 not just an act of mischief, that these acts occurred because  
10 of a strong belief by him and his group that they're the  
11 appropriate thing to do to spread their message; and that  
12 makes it a little different than just one who might have made  
13 a mistake or pulled something on Halloween.

14 In addition, the defendant has traveled to Germany  
15 and the Ukraine, we're told twice here, to meet with other  
16 members of the organization. Given the defendant's pattern  
17 of travel with the purpose of committing violence and  
18 defendant's radical white supremacist ideology that appears  
19 to eventually manifest in violence, the Court finds that no  
20 condition or combination of conditions of release would  
21 reasonably assure the safety of any other person in the  
22 community, or his appearance at trial.

23 It is ordered the defendant be committed to the  
24 custody of the Attorney General pending trial in this matter  
25 on January 14 through 18, 2019.

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1 To the extent practical, defendant is to be confined  
2 separate from persons awaiting or serving sentences or being  
3 held in custody pending appeal. The defendant shall be  
4 afforded reasonable opportunities for private consultation  
5 with counsel.

6 Upon an order of this Court or request by the  
7 attorney of the United States, the defendant is to be  
8 released to the marshal for the purpose of court appearances.

9 I'll just point out with regard to the -- his -- I  
10 know his parents are willing to put up their house but, as I  
11 say, this is a matter of some person with very strong beliefs  
12 that the Court is not satisfied that his beliefs would -- his  
13 allegiance to family might not be as strong as his beliefs  
14 might lead him to do, and that's from the -- that's what the  
15 allegation and the evidence would indicate.

16 I do acknowledge the government has the burden of  
17 proof by a preponderance of the evidence.

18 Anything else in the case?

19 MR. COX: No, Your Honor.

20 MR. CULLEN: No, Your Honor.

21 THE COURT: All right. Thank you all.

22 THE MARSHAL: All rise.

23 (Proceedings adjourned, 12:26 p.m.)

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CERTIFICATE

I, JoRita B. Meyer, certify that the foregoing is a  
correct transcript from the record of proceedings in  
the above-entitled matter.

/s/ JoRita B. Meyer

Date: 8/13/2019